

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

TYEE DRY KILNS, INC.

Appellant,

v.

PUGET SOUND AIR POLLUTION  
CONTROL AGENCY,

Respondent.

PCHB No. 89-31

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

THIS MATTER is the appeal of a Puget Sound Air Pollution Control Agency's ("PSAPCA") notice and order of civil penalty (No. 6923), assessing \$400 for alleged violation of the opacity standard, Agency Regulation I at Section 9.03 and WAC 173-400-040. The hearing before the Pollution Control Hearings Board was held on Tuesday, July 25, 1989, in Lacey, Washington. Board members present were Harold S. Zimmerman, Presiding, and Judith A. Bendor, Chair.

Phil Simmons, General Manager, represented appellant Tyee Dry Kilns, Inc. Keith D. McGoffin of McGoffin and McGoffin, attorney at

1 law, represented respondent PSAPCA. The proceedings were reported by  
2 Gene Barker and Associates. Witnesses were sworn and testified.  
3 Exhibits were admitted and examined. Parties made argument. From the  
4 testimony heard, exhibits examined and contentions, the Board makes  
5 the following:

6 FINDINGS OF FACT

7 I

8 Tyee Dry Kilns, Inc., ("Tyee") operates a manufacturing plant at  
9 765 South Myrtle Street, Seattle, King County, Washington. The  
10 plant's wood-fired boiler was in operation on December 14, 1988.

11 II

12 Puget Sound Air Pollution Control Agency ("PSAPCA") is a  
13 municipal corporation with authority to conduct a program of air  
14 pollution prevention and control in an area which includes the  
15 appellant's plant. The Pollution Control Hearings Board recognizes  
16 and takes notice of PSAPCA's Regulation I, including Article 9, which  
17 deals with the control of the emissions of air contaminant by opacity  
18 visual standards.

19 III

20 On December 14, 1988, in the morning, PSAPCA's inspector saw  
21 while driving on Highway I-5, an opaque whitish-blue plume rising from  
22 appellant's plant. The inspector has worked for over two years as a  
23 PSAPCA inspector, and also has extensive pollution work experience.  
24 The inspector's certification for reading black smoke and white smoke  
25

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(2)

1 under Department of Ecology standards, was current on the day of the  
2 incident.

3 IV

4 The inspector went to the roof of a telephone building, about 40  
5 feet above ground, approximately 600 feet to the east of appellant's  
6 plant. He took readings from 8:18 a.m. to 8:24 a.m. for 6 1/2  
7 minutes. While taking the readings, the rising sun was to his back  
8 within a 140° arc. The opaque whitish-blue plume was perpendicular to  
9 him, rising from appellant's wood-fired 70 foot-high boiler stack.

10 Sunrise on December 14, 1988, was at 7:49 a.m. with the sun  
11 emerging from behind the hills to the east somewhat later. There was  
12 sufficient light in the sky to take accurate readings of this plume.  
13 The inspector used a crane and the dark hillside behind the plant to  
14 assist in the readings.

15 The plume's opacity ranged from 30% to 50% for the 6 1/2  
16 minutes. The inspector contemporaneously noted the readings on a work  
17 sheet.

18 V

19 After the readings, the inspector left the telephone building and  
20 went to appellant's plant. At 8:45 a.m. he found the plant manager,  
21 Mr. Simmons and a foreman, and issued a Notice of Violation No. 025391  
22 which recited that violations of PSAPCA's opacity regulation 9.03 and  
23 WAC 173-400-040(1) had occurred.  
24  
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FINAL FINDINGS OF FACT,  
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(3)

1 VI

2 After the inspector left, Tyee did not check on the boiler, or  
3 otherwise make any effort to determine the source of the alleged  
4 problem. It was the plant manager's basic belief that it was too dark  
5 to take an accurate plume reading.

6 VII

7 On February 23, 1989, the agency sent Tyee a Notice and Order of  
8 Civil Penalty No. 6923, assessing a fine of \$400 for the alleged  
9 violation. Appellant Tyee filed its appeal with this Board, which  
10 became our PCHB No. 89-31.

11 VIII

12 Prior to the incident in question, Tyee Dry Kilns, Inc. had on  
13 October 26, 1987 agreed to a Stipulation and Order of Dismissal with  
14 PSAPCA concerning three prior civil penalties for violations of the  
15 opacity standard, and paid \$900 of an assessed \$1,200 in civil  
16 penalties.

17 IX

18 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
19 adopted as such.

20 From these Findings of Fact, the Board enters the following

21 CONCLUSIONS OF LAW

22 I

23 The Board has jurisdiction over the parties and the subject  
24  
25

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1 matter. Chapt. 43.21B and 70.94 RCW.

2 II

3 PSAPCA Regulation I at Section 9.03 prohibits air emissions more  
4 than 20% opacity for a period aggregating more than three minutes in  
5 any one hour. 9.03(a)(1) and (2). This limitation does not apply  
6 when the presence of uncombined water is the only reason for the  
7 emissions to fail to meet the requirement. 9.03(c). Appellant  
8 presented no evidence demonstrating the uncombined water exception.

9 We conclude Section 9.03 was violated.

10 WAC 173-400-040 is to substantially the same effect (20% opacity  
11 for more than 3 minutes in one hour), and we conclude was also  
12 violated. Appellant did not endeavor to prove any of the exceptions  
13 to WAC 173-400-040.

14 III

15 The principal aim of civil penalties is to deter violations and  
16 promote compliance. The \$400 fine is the statutory maximum.  
17 Appellant has a prior history with opacity problems. Moreover on  
18 December 14, 1988 appellant made no effort to eliminate the problem.  
19 Under all the facts and circumstances the fine is appropriate.  
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26 FINAL FINDINGS OF FACT,  
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ORDER

Notice and Order of Civil Penalty #6923 in the sum of \$400 is  
AFFIRMED.

DONE this 9<sup>th</sup> day of August, 1989.

POLLUTION CONTROL HEARINGS BOARD

Harold S. Zimmerman  
HAROLD S. ZIMMERMAN, Presiding

Judith A. Bendor  
JUDITH A. BENDOR, Chair